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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TERRANCE D. RUTHERFORD,	)	Case No. CV 11-04433 DDP (MANx)
	)	
Plaintiff,	)	
	)	<b>ORDER DENYING PLAINTIFF'S MOTION</b>
v.	)	<b>FOR RECONSIDERATION</b>
	)	
FIA CARD SERVICES, N.A.,	)	
ALASKA AIRLINES, INC.,	)	
HORIZON AIR INDUSTRIES,	)	
INC.,	)	
	)	[Dkt. No. 76]
Defendants.	)	
	)	
	)	

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Plaintiff's Motion for Reconsideration is DENIED. As explained in this court's order, the First Amended Complaint does not allege that Plaintiff performed under a written contract at any time subsequent to 2007. Plaintiff now "acknowledges that the fact of his ongoing and current participation in the Incentive Program is not clearly pled," but argues that such facts are set forth in paragraphs 68, 88, and 89. (Motion at 4 n.2; Reply at 4.) Plaintiff is incorrect.

Paragraph 68 states, "Upon information and belief, Bank of America's failure to pay all sums owed, and the airlines' failure

1 to ensure that all sums are paid, under the Incentive Program  
2 Contracts has occurred since before the beginning of the Class  
3 Period and is continuing." (FAC ¶ 68.) Paragraph 88 states,  
4 "[e]ach and every time that an application is either 'processed'  
5 and/or 'approved,' but for which Bank of America does not pay  
6 Plaintiff and Class members under the terms of the Incentive  
7 Program Contracts, a separate breach of those Contracts occurs."  
8 (FAC ¶ 88.) Paragraph 89 read, "Each and every time that an  
9 application is either 'processed' and/or 'approved,' but for which  
10 the airlines do not ensure that Plaintiff and Class members are  
11 paid under the terms of the Incentive Program Contracts, a separate  
12 breach of those Contracts occurs." (FAC ¶ 89.) Contrary to  
13 Plaintiff's assertion, he has not alleged any performance  
14 subsequent to 2007 that would fall within the limitations period.

15 Plaintiff further argues that this court erred in denying him  
16 leave to amend his complaint a second time. (Reply at 7.)  
17 Specifically, Plaintiff argues for the first time that a Second  
18 Amended Complaint would allege performance within the limitations  
19 period. At argument, the court questioned whether Plaintiff could  
20 allege any such facts, and pointed out the lack of any allegation  
21 that Plaintiff continues to perform under the Incentive Contracts.  
22 (Tr. at 8:22-25.) Plaintiff's counsel did not provide any other  
23 examples of post-2007 performance, but rather responded by pointing  
24 to paragraph 68 of the FAC, which, as discussed above, does not  
25 allege performance of any kind.<sup>1</sup> (Tr. at 9:4.) Given that  
26 Plaintiff has already amended his complaint once and could not

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28 <sup>1</sup> Counsel also referred to paragraph sixty-four, which is  
substantively similar to paragraph eighty-eight.

1 identify any post-2007 performance at argument, the court is not  
2 persuaded by Plaintiff's contention, made for the first time in  
3 this Motion for Reconsideration, that he can allege performance and  
4 breach within the statute of limitations period. Accordingly, any  
5 amendment would be futile.

6 Plaintiff's motion is DENIED.

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10 IT IS SO ORDERED.

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13 Dated: January 29, 2013

  
DEAN D. PREGERSON  
United States District Judge